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Insurance Likely Kept Swift Out Of The Woods After Vienna

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The cancellation of three Taylor Swift concerts in Vienna in August due to a foiled terror plot was a nightmare for Swifties worldwide, and not a nightmare dressed like a daydream.

While the disruption of the Austrian leg of the Eras Tour was crushing for music lovers, the financial blow to Swift, the Ernst Happel Stadium, the concert promoter Barracuda Music and others involved likely was softened by event cancellation and additional terrorism coverage she is reported to have carried.

Indeed, Swift's loss alone was estimated at $12 million.[1] The Vienna Eras Tour run was set to begin on Aug. 8, and arrests of the suspected would-be terrorists were made right before, on Aug. 6 and 7.

Event Cancellation and Nonappearance Insurance

Event cancellation and nonappearance insurance provides coverage for losses that are the direct result of the cancellation, postponement, relocation or similar alteration of an insured event or inability of a key person to attend or perform for reasons outside the policyholders' control.

This type of coverage differs from property insurance or business interruption insurance. In some respects, event cancellation and nonappearance insurance is broader because it covers a wide range of risks, but in other respects, it is narrower because it only provides coverage for losses relating to a particular event or series of events, like a concert tour.

For example, this type of insurance would provide coverage for a concert that is postponed because of a singer's vocal issues, like the Bruce Springsteen concerts that were postponed in May,[2] or a major sporting event that is canceled due to severe weather conditions, like the Formula 1 2023 Emilia-Romagna Grand Prix, which was canceled due to extreme flooding.[3]

This coverage applies to reimbursement of purchased tickets, lost ticket sales, the entertainer's fee, extra out-of-pocket expenses, travel costs and more.

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Terrorism Insurance

While many event cancellation insurance policies exclude coverage for losses due to "any act of terrorism or threat or fear thereof," policyholders, including Taylor Swift, often purchase a terrorism coverage extension or a separate terrorism policy to retain coverage for cancellation losses that are subject to such exclusions.

Terrorism coverage provides coverage for the insured event if it is canceled, etc., "as a direct result of an act or threat of terrorism," sometimes provided that the act or threat of terrorism results in an action or order by a government or public safety official that restricts the policyholder's ability to hold the insured event as scheduled.

It is important to note that this coverage may respond only to situations where there is actual terrorist activity, and not just fear of a potential act of terrorism. That clearly was the case with the cancellation of the Taylor Swift concerts in Vienna, given the disruption of an actual terrorist plot targeting the event.

Policyholders may purchase additional coverage for related perils, like civil commotion, cyberrisks, national mourning, and nuclear, biological or chemical terrorism, which are typically excluded from standard event cancellation and nonappearance policies.

"Bad Blood" Between Performers and Insurance Companies

These valuable policies cover all sorts of other issues that lead to the cancellation of concerts and other events. Other policyholders should take heed of Foo Fighters' row with Lloyd's of London over event cancellation and terrorism coverage.

In 2015, Foo Fighters canceled a total of 11 performances, which implicated both the "Contingency Non-Appearance and Cancellation Insurance Cancellation, Abandonment, Postponement or Interruption of Events Policy" and "Contingency Non-Appearance and Cancellation Insurance Cancellation, Abandonment, Postponement or Interruption of Events Caused By Terrorism Policy" that the band had purchased to cover its Sonic Highways World Tour.[4]

The band called on its event cancellation policy to provide coverage when it canceled seven concerts after lead singer Dave Grohl broke his leg during a performance in June 2015.[5] Foo Fighters subsequently sought coverage under its terrorism policy after canceling four European concerts in the immediate aftermath of the Nov. 13, 2015, Paris terrorist attacks and in response to a terror threat directed at the band.[6]

Disputes arose under both policies, leading Foo Fighters to file an insurance coverage action against its insurance broker and Lloyd's of London in the U.S. District Court for the Central District of California.[7]

Determining whether an event is "canceled," "postponed," or "rescheduled" may appear a pedantic exercise at first blush, but these distinctions are often defined or discussed in the policies and affect the amount of a policyholder's potential recovery. Foo Fighters learned this "all too well" when Lloyd's disputed the amount of coverage for the seven cancellations following Grohl's injury.

Foo Fighters' event cancellation policy provided coverage for "70% of the Gross Guarantees and Overages and Production and Airfare/Charter/Media Contribution (where applicable) should any Insured performance(s) or Events specified in the Tour Schedule be necessarily canceled, Abandoned, Postponed, or Interrupted."[8]

It also provided coverage for "100% of proven additional costs and charges reasonably and necessarily paid by the Assured to avoid or diminish a loss in respect of the original Insured Performance(s).[9]
The event cancellation policy defined "Cancellation or canceled" as "the inability to proceed at the Venue with any or all of the Insured Performance(s) or Event(s) prior to commencement"[10] and defined "Postponement or Postponed" as "the unavoidable deferment of any or all of the Insured Performance(s) or Event(s) to another time."[11] Though the event cancellation policy did not define "rescheduled" or "rescheduling costs," it also provided as follows:

> Should any Insured Performance(s) or Event(s) be rescheduled, the insurers will pay:
>
> a) 100% of rescheduling costs and/or
> b) any reduction in box office income resulting in a reduced Guarantee and/or income subject to (a) and (b) above not

> Production and Airfare/Charter/Freight/Media Contribution (where applicable) for the Insured Performance(s) or Event(s). Insurers agree not to take into account savings made following cancellation of the original Insured Performance(s) or Event(s). [12]

A dispute between Foo Fighters, its broker and Lloyd's of London arose when, according to the band, the broker and Lloyd's began characterizing three canceled UK performances – at Wembley Stadium and BT Murrayfield Stadium – as rescheduled when the band added three new shows to the end of the tour – two at Milton Keynes National Bowl, a smaller venue outside London, and one at BT Murrayfield Stadium.

Business managers, event producers, performance venues and others should take note...

According to the complaint, Lloyd's refused to pay for the three concerts it characterized as rescheduled. Though Foo Fighters had purchased terrorism coverage, Lloyd's also refused to pay anything for the shows canceled due to the November 2015 Paris terrorist attacks and subsequent terror threat against the band.

It appears that Lloyds delayed payment on Foo Fighters' entire terrorism claim because it did not believe that cancellation of the Barcelona performance six days after the attacks bore a sufficient connection to the attacks. The suit was resolved without any public disclosure of a settlement in 2016.

Business managers, event producers, performance venues and others should take note of the distinctions at issue in the claim stemming from Grohl's injury. When faced with changes to a tour schedule, it is important to be mindful of the language used with brokers and insurance companies, review all endorsements, and to consider the bottom line, because, as the Foo Fighters case shows, the addition of performances at or near canceled venues may lead insurance companies to pay less on a claim.

Conclusion

As is the case with all commercial insurance products, the coverage provided depends on the specific terms of the insurance policy purchased.

Policyholders planning large-scale music and sporting events should take note of the various event cancellation insurance coverages offered to ensure they have adequate insurance in place and should weigh whether to purchase terrorism coverage in light of rising tensions globally.

Luckily for Taylor Swift, she purchased this coverage and should expect to recover $12 million for the three canceled concerts, which, distinct from the facts presented in the Foo Fighters' action, were all at the same venue with the plot only uncovered days before and arrests made on the day before the run was set to begin.

Weigh whether to purchase terrorism coverage in light of rising tensions globally.

Footnotes

[1]https://www.insuranceinsider.com/article/2dneg4hqdu4lmmakp1vr4/londonmarket/brit-leads-event-cancellation-cover-for-12mn-taylor-swift-vienna-loss.
[2] https://www.rollingstone.com/music/music-news/bruce-springsteen-postponeseuropean-concerts-vocal-issues-1235028124/.
[3] https://www.formula1.com/en/latest/article/breaking-update-on-the-emilia-romagnagrand-prix-at-imola.14xk8GLh2Lr8wBGdJqhxnO.
[4] Amended Complaint at 2, 5, 1/1-/25, Foo Fighters LLC v. Certain Underwriters at Lloyd's, London et al. (C.D. Cal. 2016) (No. 2:16-cv-04208-R-JEM).
[5] Id. at 7. [6] Id. at 19. [7] Id.
[8] Id. at 5. [9] Id. at 6. [10] Id. [11] Id. [12] Id.

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Know the Limitations and Specifications in Racehorse Insurance Policies

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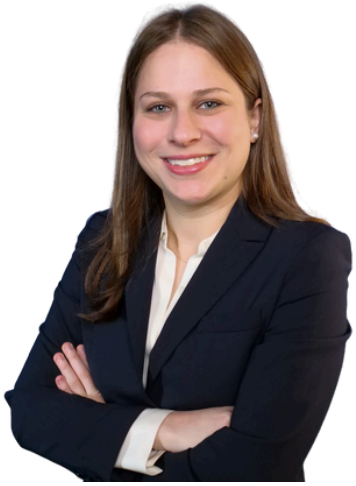

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Horse owners and breeders should be aware of the possible limitations in their racehorse insurance coverage policy. Two recent coverage disputes decided in favor of the insurance company illustrate how policy exclusions and limitations can undercut coverage. These cases highlight the need to carefully consider policy language in light of one's own practices and possessions.

In a recent case in Kentucky, a horse owner and breeder found out it was not covered after its prized sire died. In Creek Equine, LLC v. North American Specialty Insurance Company, No. 5:2022-cv-00095 (E.D. Ky. Sept 16, 2024), Cypress Creek Equine (Cypress) paid for a mortality insurance policy for stallion Laoban but ultimately received no insurance coverage for the stallion's death – even though Laoban was insured for over $2 million. Cypress also insured Laoban for infertility caused by accident, sickness and disease. Cypress Creek is instructive because it provides guidelines for owners and breeders on how a mortality insurance policy may be construed.

Cypress, a limited liability company engaged in breeding and racing horses, owned Laoban, an 11-year-old horse that was born in 2013, raced from 2015 to 2016, and was ultimately retired to stud. Cypress bought mortality insurance for Laoban and other horses in the stable from North American Specialty Insurance (NAS). NAS insured Southern Equine Stables, LLC and Cypress' shares in Laoban between March 11, 2016 through Laoban's death. In May 2021 Laoban unexpectedly died after suffering an allergic reaction after being given vitamin and mineral supplements – together known as a "Black Shot" – to "increase his interest in breeding."

The NAS policy provided insurance coverage "for death of a horse for any reason except one specifically listed under the Exclusions below." NAS argued that there was no coverage under Exclusion (f), the "Unauthorized Medication Exclusion." This exclusion purports to preclude coverage for loss resulting from administration of drugs or medication unless done or directed by a veterinarian and certified by him to have been of "a preventive nature or necessitated by accident, sickness or disease of the horse." The court found that the "Black Shot" was considered "medicine" and a "drug" because the three vitamins in the shot contained a warning label noting "Federal law restricts this drug to use by or on order of a licensed veterinarian."

Another coverage issue facing horse owners stems from differences in coverage accorded to horses in different classifications

Further, all the ingredients were regulated by the FDA and have a National Drug Code. While NAS failed to define "drug" and "medication," the court found that Cypress could not reasonably expect coverage for the "Black Shot" under the ordinary definition of "drug" and "medication." The court also concluded that the "Black Shot" was not of preventative nature or necessitated by accident, sickness, or disease. The shot had one purpose: increase Laoban's energy levels for breeding. Coverage was denied under this exclusion.

NAS also invoked the Proper Care Exclusion (Exclusion (a)). This exclusion provided that there is no coverage "resulting from (1) failure to provide proper care and attention for the horse; or (2) malicious, willful or other intentional acts by you." The court found that proper care meant a "degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances." The Court accepted testimony that the doctor who administered the shot was suspended and violated the standard of care.

After Cypress Creek, horse owners and breeders should be aware that their mortality policy may be limited beyond their initial reasonable expectations. As in this case, certain types of shots given to racehorses will be excluded. It also means that the insurance company may second-guess the decisions of your horse's veterinarian staff.

Another coverage issue facing horse owners stems from differences in coverage accorded to horses in different classifications, such as racehorses and pleasure horses. For example, while medical insurance is available for pleasure horses and will cover surgical procedures and loss of use, this coverage is generally not available for racehorses. Obviously, proper classification is critical.

In Harrison v. Great Am. Assur. Co., 227 S.W.3d 890, 891 (Tex. App. 2007), a thoroughbred filly, Oma, was insured as a racehorse. After Oma was injured, her owner called the insurance agent and changed the classification from racehorse to pleasure horse on the insurance policy, resulting in a premium overpayment. The overpayment was applied to the remaining payments due on the policy. Oma recovered and began race training again but was injured and had to be euthanized shortly after her recovery.

Great American denied coverage, claiming that while Oma was insured as a "pleasure horse" at the time of her death, she was being used as a racehorse at the time of her injury. The terms "racehorse" and "pleasure horse" were not defined in the policy. Oma's owners argued that a reasonable interpretation of "racehorse" is a horse that has raced, not a horse that is being trained to race but has never raced. Further, a racehorse is also a pleasure horse because it brings pleasure to its owner; and a pleasure horse could also be a racehorse if the horse races another pleasure horse to see which one reaches the barn first. Essentially, because the policy terms were undefined, there was no distinction between the terms. This could be a reasonable interpretation. Nonetheless, the court found that these policy terms were not ambiguous, and that the definition of racehorse meant "a horse bred and trained for racing." Oma training as a racehorse made her a racehorse, even though she never competed. The terms "racehorse" and "pleasure horse" were not interchangeable, even though the policy did not define the terms. This interpretation of "racehorse" was crucial because without it the policy classifications would have been meaningless.

Horse owners and breeders seeking racehorse insurance coverage should be sure to pay particular attention to their insurance policies. They should consult with an experienced insurance agent in this field before purchasing a policy and ask the agent to compare different policies and explain policy provisions. Before purchasing a policy, owners and breeders should remember that courts have interpreted undefined terms in the policy through their ordinary meaning: a racehorse does not have to have competed to be considered a "racehorse," and a mortality insurance policy has specific and limited coverage.

While the coverage battles discussed above were resolved in favor of the insurance company, that is by no means always the case, and horse owners and breeders should not take coverage denials at face value. Insurance companies' initial denials and refusal to pay out on the policy that they sold can sometimes be reversed by legal communication and negotiation – and have often been overturned by courts finding that insurance companies have interpreted their coverage grants too narrowly or their policy exclusions too broadly. In those cases, the insurance companies are required to pay out under the policy and, under certain circumstances, pay additional damages to the policyholder.

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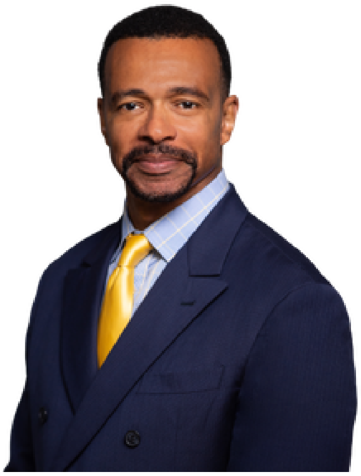
NFL Teams Make Historic Move to Allow Private Equity Ownership



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In a groundbreaking development, the Buffalo Bills and Miami Dolphins have become the first teams in National Football League (NFL) history to sell minority ownership stakes to private equity firms. This strategic shift marks a significant evolution in the league's financial structure, allowing institutional investors to engage directly with team ownership.

Historically, the NFL has been the last major U.S. sports league to permit institutional investment in team ownership. This changed in August when the NFL approved new regulations allowing private equity firms to acquire stakes in its franchises. This article examines the new permitted purchases involving the Buffalo Bills and the Miami Dolphins.

Leading the Miami Dolphins transaction, Ares Management has acquired a 10% stake, which represents the maximum ownership percentage permitted under the NFL's revised policy. The investment extends beyond the team, incorporating stakes in Hard Rock Stadium and the Formula 1 Crypto.com Miami Grand Prix. Notable investors joining Ares include Joe Tsai, owner of the Brooklyn Nets, and investor Oliver Weisberg.

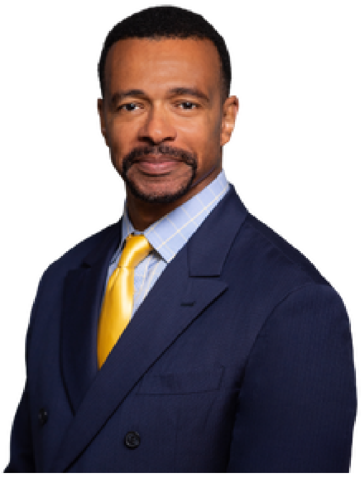
For the Buffalo Bills transaction, Arctos Partners spearheaded a similar acquisition of a 10% stake. The Bills, predominantly owned by billionaire Terry Pegula, welcomed a group of investors featuring former professional athletes Vince Carter, Tracy McGrady, and Jozy Altidore.

Arctos and Ares are among the first four private equity groups sanctioned to purchase ownership interests in NFL teams. The other two approved entities are Sixth Street and a consortium comprising Blackstone, Carlyle, CVC Capital Partners, Dynasty Equity, and Ludis, a platform established by former NFL player Curtis Martin. Additional private equity groups are anticipated to receive approval in the forthcoming months, although a precise timetable remains undeclared.

In a related move, the NFL has sanctioned the sale of a minority interest in the Philadelphia Eagles, valued at $8.3 billion. However, this transaction notably excludes private equity participation, as reported by CNBC.

These pioneering transactions signify a major transformative era for the NFL, aligning its financial strategies with those of other major sports leagues and potentially setting a precedent for future ownership structures. As the landscape of sports ownership continues to evolve, these developments highlight the increasing role of institutional investors in shaping the future of professional sports.

Legal Considerations in the Wake of Diddy's "Freak Out" Gatherings: Preparing for Civil Liability



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Recent allegations stemming from Sean ("Diddy") Combs' infamous "freak off" parties have captured significant public attention, particularly in light of the music mogul's arrest and indictment on a range of criminal charges. Reports suggest a complex web of sexual assault and misconduct that could lead to significant civil liabilities. Many civil suits already have been filed alleging substantial harm to numerous alleged victims. Given the amounts at stake, experience teaches that there may be disputes regarding insurance coverage for the alleged acts and liabilities at hand.

The criminal proceedings already underway suggest there are multiple complainants and victims, underscoring the gravity of the alleged harm. One attorney based in Texas has filed suit on behalf of more than 100 alleged victims and it appears likely there will be more such suits. Potential defendants in these civil cases could include: (i) event planners and organizers involved in helping to plan and execute the events; (ii) venues where the events were held; and (iii) participants, attendees and witnesses who allegedly may have been complicit in illegal activities.

To prepare for the inevitable legal battles, potential defendants should take proactive steps now and should consider notifying their insurance companies as soon as practicable.

Potential defendants should first identify insurance policies that might respond to such claims. These include: (i) general liability (GL) insurance, which typically covers businesses against claims arising from bodily injury and property damage; (ii) directors and officers (D&O) insurance, which provides coverage for claims alleging wrongful acts in business decisions; (iii) homeowners policies, which typically cover individuals for claims alleging bodily injury or property damage; and (iv) umbrella or excess liability policies that sit above all such liability insurance policies.

After identifying the relevant insurance policies and discussing the above issues with brokers and coverage counsel, potential defendants should coordinate with their insurance companies and the retained or assigned defense counsel. Insurance companies may resort to tactics tending to isolate rather than support the policyholder at the exact time that assistance with a strong defense is essential. It is important that policyholders stand firm in such situations and insist on receiving the defense promised to them in the insurance policies that they purchased. It is important to explore specific allegations and theories that are more likely to compel an insurer to defend and cover the underlying claim. In addition to claims alleging bodily injury, claims alleging false imprisonment, slander and invasion of privacy also can provide a means to secure insurance company engagement in the defense of challenging claims.

Conclusion

The fallout from Diddy's "freak out" gatherings highlights the complex intersection of criminal and civil liability in cases involving allegations of significant harm. Individuals and entities connected to these events must act swiftly to protect their interests. Identifying responsive insurance policies and engaging experienced legal counsel are critical first steps in navigating the challenges ahead. By taking a proactive and informed approach, those involved can better manage the risks and responsibilities that accompany such significant allegations.

Individuals and entities connected to these events must act swiftly to protect their interests.

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We invite you to contact the authors with any questions.